**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MELVIN L. CRAWLEY	)	
6611 Baronscourt Loop	)	
Dublin, OH 43016	)	**Civil Action No. 1:CV-07-782**
	)	
Plaintiff,	)	
	)	
v.	)	**(Chief Judge Yvette Kane)**
	)	
NORFOLK SOUTHERN CORP.	)	
Three Commercial Place	)	
Norfolk, VA 23510	)	**ELECTRONICALLY FILED**
	)	
Defendant.	)	

MEMORANDUM OF DEFENDANT NORFOLK SOUTHERN CORPORATION IN SUPPORT OF ITS MOTION TO DISMISS CERTAIN OF PLAINTIFF'S TITLE VII CLAIMS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, TRANSFER THOSE CLAIMS, AND TO TRANSFER PLAINTIFF'S REMAINING CLAIMS UNDER TITLE VII AND SECTION 1981

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF RELEVANT FACTS 4

QUESTIONS PRESENTED 8

ARGUMENT 8

I. Because This Court Is Not A Proper Venue For Certain Of Plaintiff's Title VII Claims, Those Claims Must Be Dismissed Or, In The Alternative, Transferred To An Appropriate Forum 8

II. All Of Plaintiff's Claims Could Have Been Brought Initially In The Western District of Virginia 11

A. Crawley's Section 1981 claims could have been brought in the Western District of Virginia 12

B. Crawley's Title VII claims could have been brought in the Western District of Virginia 13

III. The Convenience Of The Parties And All Private And Public Interests Compel Transfer To The Western District of Virginia 14

A. The Private Interest Factors Clearly Favor the Western District of Virginia 15

1. Crawley's choice of forum is not entitled to deference 15

2. NS's preferred forum is the Western District of Virginia 16

3. Crawley's claims arose in Roanoke 16

4. The Western District of Virginia is the more convenient forum for the parties 17

5. The Western District of Virginia is more convenient for key witnesses 18

6. The relevant records pertaining to Crawley's employment are located in Virginia 18

B. The public interest factors also favor transfer of this case to the Western District of Virginia 19

1. Crawley's six claims could be litigated most expeditiously and inexpensively in the Western District of Virginia........ 20

2. Virginia has a greater local interest in this case than Pennsylvania 21

CONCLUSION 21

TABLE OF AUTHORITIES

CASES **Page Nos.**

Bragg v. Hoffman Homes, Inc.,
No. 04-CV-4984, 2005 WL 272966 (E.D. Pa. Feb. 3, 2005) 12

Dobrick-Peirce v. Open Options, Inc.,
No. 2:05CV1451, 2006 WL 2089960 (W.D. Pa. July 25, 2006).........................15

High River Limited Partnership v. Mylan Labs., Inc.,
353 F. Supp. 2d 487 (M.D. Pa. 2005) 12, 15

Jumara v. State Farm Ins. Co., 55 F.3d 873 (3rd Cir. 1995)......................... 14-15, 19

Lomanno v. Black, 285 F. Supp. 2d 637 (E.D. Pa. 2003) 2, 15-16, 18, 20

Passantino v. Johnson & Johnson Consumer Products, Inc.,
212 F.3d 493 (9th Cir. 2000) 13-14

Silva v. Maryland Screen Printers, Inc.,
No. 1:CV-04-2018, 2005 WL 2250842 (M.D. Pa. Sept. 15, 2005).......................8

Soul v. Movado Retail Group, Inc.,
No. 1:06-CV-2115, 2007 WL 1119296 (M.D. Pa. April 10, 2007).......................9

Sunbelt Corp. v. Noble, Denton & Assocs., 5 F.3d 28 (3rd Cir. 1993)....................20

Van Dusen v. Barrack, 376 U.S. 612 (1964) 11-12

Vinson v. Seven Seventeen HB Philadelphia Corp.,
No. Civ. A 00-6334, 2001 WL 1774073 (E.D. Pa. Oct. 31, 2001)................ 20-21

STATUTES

28 U.S.C. § 1391 ....3, 12, 20

28 U.S.C. § 1404 .... 3, 8, 11, 14-15, 22

28 U.S.C. § 1406 ....2, 8, 11, 20, 22

42 U.S.C. § 1981 1

42 U.S.C. § 2000e 1

42 U.S.C. § 2000e-5(f)(3) 3, 9, 13

Fed. R. Civ. P. 12(b)(3) 8

INTRODUCTION

Although Plaintiff Melvin L. Crawley could have filed this employment discrimination lawsuit in a district with numerous connections to the claims he has asserted, Crawley instead chose to file in a district with no connection to his claims. Crawley, who has spent the last four years working for Defendant Norfolk Southern Corporation ("NS") in Virginia and Ohio, has sued NS claiming that it discriminated and retaliated against him in violation of Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. § 2000e, *et seq*., and the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981, in his compensation, by demoting him to a position in Columbus, Ohio, and by failing to promote him to various higher level positions.

Crawley's demotion is the employment action at the heart of his lawsuit; it resulted from his failure to ensure compliance with important NS policies concerning the handling and reporting of employee injuries when he worked in Roanoke, Virginia as the Division Superintendent for the Virginia Division. The employee injuries that Crawley mishandled occurred in or near Roanoke, as did the Company's investigation into his involvement. Key witnesses, including the injured individuals and the other supervisors who, with Crawley, were responsible for mishandling the reporting of the injuries, are located in or around Roanoke. Many of the documents related to these incidents and the investigation that led to Crawley's demotion are also located in Virginia.

Rather than filing suit in that appropriate and convenient venue, Crawley filed his lawsuit here, a forum with no connection to this dispute. Crawley has never worked here. None of the material events took place here. None of the evidence is located here. None of the witnesses lives or works here. Indeed, Crawley does not even live here.

As a general rule, venue must be established for each claim in a complaint. Lomanno v. Black, 285 F. Supp. 2d 637, 641 (E.D. Pa. 2003). Here, Crawley has brought claims under Title VII, including discriminatory demotion, compensation, and failure to promote claims, and additional claims under § 1981, including discriminatory demotion and discriminatory/retaliatory failure to promote and compensation claims. Under Title VII's exclusive venue provision, this Court is not a proper venue for Crawley's Title VII claims alleging discriminatory demotion, compensation and failure to promote to positions located outside this district. Accordingly, 28 U.S.C. § 1406 requires that those claims be dismissed or, in the alternative, transferred to a district in which they could have been brought. Moreover, given the lack of any meaningful connection between this district and Crawley's remaining claims (i.e., his Title VII failure to promote claim for positions located in Harrisburg and his § 1981 claims), as to which venue here is appropriate, this Court nonetheless should exercise its authority under 28 U.S.C. § 1404(a), which permits a transfer "for the convenience of the parties and witnesses, and in the interest of justice," and transfer those claims, along with the claims for which venue is lacking, to a more appropriate forum: the Western District of Virginia.

The Western District of Virginia is an appropriate forum both for Crawley's § 1981 claims under the general venue provision, 28 U.S.C. § 1391(b), and for his Title VII claims under that statute's exclusive venue provision, 42 U.S.C. 2000e-5(f)(3). Courts contemplating a transfer also must take into account various private and public interest factors, all of which heavily favor a transfer here. The material events giving rise to his lawsuit occurred in Roanoke, which is also home to numerous important witnesses and relevant documents. The Middle District of Pennsylvania has no nexus with Crawley's claims and is inconvenient for NS and its key witnesses as compared to Roanoke. Nor is this district more convenient for Crawley. Instead, he should be much more familiar with Roanoke, where he worked for two years. Furthermore, Crawley does not reside here, but rather in Dublin, Ohio, approximately the same distance from Roanoke as it is from Harrisburg.

Finally, the public's interests in resolving claims quickly and inexpensively and in having local disputes resolved where the material events took place also strongly favor a transfer. Crawley's choice of venue in a district with no connection to this case serves neither interest. Justice is not served when a dispute centered in the Western District of Virginia is taken from the courts and citizens of that district and resolved in a forum with no connection to the controversy.

STATEMENT OF RELEVANT FACTS

Plaintiff Melvin Crawley began working for Norfolk and Western Railway ("NW"), a predecessor of NS, in June 1979 as a Management Trainee in Roanoke, Virginia. Cobbs Aff., ¶ 3. Since that time, Crawley has held numerous management positions with NW and NS in several other states, including New York, Missouri, Illinois, Kentucky, Alabama and Ohio. Cobbs Aff., ¶ 3. He has never worked in the Middle District of Pennsylvania, nor does he reside here. Cobbs Aff., ¶ 3.

After rising to the position of Division Superintendent for the Alabama Division in March 2000, Crawley transferred in August 2003 to Roanoke, Virginia, where he served as Division Superintendent for the Virginia Division. Complaint, ¶¶ 7, 9. Roanoke is in the Western District of Virginia. On November 1, 2005, Crawley was demoted to the position of Superintendent of Terminals, Columbus, Ohio, where he remains employed today. Complaint, ¶¶ 5, 7. Crawley resides in Dublin, Ohio. Cobbs Aff., ¶ 16.

Crawley's demotion from Division Superintendent in Roanoke to Terminal Superintendent in Columbus resulted, in large part, from his personal failure to assure compliance with important NS policies concerning the handling of an injury suffered by NS employee Marissa Bannister in September 2005. Cobbs Aff., ¶ 4.

On October 6, 2005, a union representative complained to NS management that Ms. Bannister had been pressured by NS management in Roanoke to change the reasons for her absence from work in order to avoid having to report her injury to the Federal Railroad Administration. Cobbs Aff., ¶ 6. Three NS officials – Mark R. MacMahon, NS's Vice President-Labor Relations, Mark Manion, NS's Executive Vice President-Operations, and Andrew Corcoran, an attorney in the NS Legal Department – traveled to Roanoke to investigate the matter and interview the individuals involved. Cobbs Aff., ¶ 7. Their investigation was based in Roanoke and included interviews of several managers and employees stationed in Roanoke, including, among others, Crawley, Assistant Terminal Superintendent D. G. Kendrick, Terminal Superintendent B. R. Cobbs, and Ms. Bannister. Cobbs Aff., ¶ 8.

Mr. Manion concluded that Crawley had mishandled the Bannister matter. Cobbs Aff., ¶ 9. Mr. Manion also learned of another instance in which Crawley had mishandled the reporting of an injury of employee W. E. Tickle, who worked in NS's Radford, Virginia facility, near Roanoke and in the Western District of Virginia. Cobbs Aff., ¶ 9.

As a result of the mishandling of the Bannister and Tickle injuries, NS demoted Crawley to Superintendent of Terminals, Columbus, Ohio. Cobbs Aff., ¶ 10.

Nearly all of the events giving rise to Crawley's demotion took place in Roanoke. Ms. Bannister was injured in Roanoke, where she still resides and works for NS. Cobbs Aff., ¶ 5. The investigation into the handling of her injury was carried out in Roanoke and included interviews of Crawley and other NS employees, all of whom worked in Roanoke. Cobbs Aff., ¶ 8. The three officers conducting the investigation currently reside and work for NS in Virginia. Cobbs Aff., ¶ 7.

Crawley received merit-based salary increases in early 2005 and late 2006. Cobbs Aff., ¶ 11. The raise he received in 2005 was based on his work in Roanoke in 2004. Complaint, ¶ 20. The 2006 raise was based on his work after his transfer to Columbus, Ohio. Cobbs Aff., ¶ 11.

In stark contrast to the numerous connections to Roanoke, no events, no present or former NS employees or officers, and no documents relating to Crawley or his demotion or other claims have any connection whatsoever to the Middle District of Pennsylvania. Crawley has never been stationed here. Cobbs Aff., ¶ 3. The officers who investigated his handling of the Bannister and Tickle matters did not conduct any part of their investigations here. Cobbs Aff., ¶ 13. No witness involved in the Bannister or Tickle injuries, the investigation of Crawley's handling of those matters, or Crawley's demotion and corresponding reduction in benefits resides or works here. Cobbs Aff., ¶ 13. No relevant documents were created or are known to be stored here. Cobbs Aff., ¶ 13.

Indeed, the only connection that the Middle District of Pennsylvania has to this litigation is Crawley's claim that NS failed to select him for promotion to two upper-level positions located in Harrisburg, Pennsylvania. Complaint, ¶¶ 15-17. However, Crawley did not travel to Pennsylvania to apply or interview for such positions. Cobbs Aff., ¶ 14. The decisions not to promote Crawley into those positions would not have been based on any events that occurred in this district and would not have been made in this district. Instead, they would have been made by NS management working in Virginia. Cobbs Aff., ¶ 14.

On April 24, 2007, just over six months after he was informed by NS that he was being demoted from Division Superintendent in Roanoke, Virginia to Terminal Superintendent in Columbus, Ohio, Crawley sued NS in this Court.

QUESTIONS PRESENTED

1. Whether Plaintiff's Title VII claims for discriminatory demotion, compensation and failure to promote to positions outside this district should be dismissed for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406 or, in the alternative, be transferred to the Western District of Virginia pursuant to 28 U.S.C. § 1406.

2. Whether Plaintiff's Title VII claims for discriminatory failure to promote to positions in Harrisburg and all Plaintiff's § 1981 claims should be transferred to the Western District of Virginia pursuant to 28 U.S.C. § 1404.

ARGUMENT

I. Because This Court Is Not A Proper Venue For Certain Of Plaintiff's Title VII Claims, Those Claims Must Be Dismissed Or, In The Alternative, Transferred To An Appropriate Forum.

Fed. R. Civ. P. 12(b)(3) provides that a defendant may move to dismiss a claim where plaintiff has brought that claim in an improper venue. Silva v. Maryland Screen Printers, Inc., No. 1:CV-04-2018, 2005 WL 2250842, at *2 (M.D. Pa. Sept. 15, 2005). Where venue is improper, 28 U.S.C. § 1406 grants courts the authority to "dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."

Title VII contains an exclusive venue provision, 42 U.S.C. § 2000e-5(f)(3), which provides that claims may only be brought in a district in which (1) "the unlawful employment practice is alleged to have been committed," (2) "the employment records relevant to such practice are maintained and administered," or (3) "the aggrieved person would have worked but for the alleged unlawful employment practice." 42 U.S.C. § 2000e-5(f)(3). "This scheme represents Congress's intent to limit venue in Title VII cases to the jurisdiction in which the alleged discrimination occurred." Soul v. Movado Retail Group, Inc., No. 1:06-CV-2115, 2007 WL 1119296, at *2 (M.D. Pa. April 10, 2007).

Crawley has brought claims under Title VII, alleging that he was unlawfully disciplined/demoted, compensated, and denied promotions because of his race. Complaint, ¶ 24. His Title VII claims for unlawful demotion, compensation and failure to promote (to positions located outside this district) are not properly before this Court. Crawley's discipline claim is based on his demotion from Division Superintendent in Roanoke to Superintendent of Terminals, Columbus, Ohio. No incident or event giving rise to his demotion occurred in this district. Any records relating to Crawley's demotion are located in

Virginia or Georgia and not here. And, but for the alleged unlawful employment action, Crawley would have remained Division Superintendent in Roanoke, Virginia. He has not, and there is no indication he would have, worked in this district.

Nor is this district a proper venue for Crawley's Title VII compensation claim. Crawley alleges that he received discriminatory yearly pay raises, including those he received in early 2005 and late 2006. Complaint, ¶ 19. Crawley acknowledges that the raise he received in 2005 was based on his "performance in the previous year," which he spent entirely in Roanoke. Complaint, ¶¶ 12, 20. Crawley's 2006 raise was based on his performance in Columbus. Crawley does not allege that any of the unlawful practices impacting his compensation occurred in this district. Management decisions relating to his compensation and salary increases were made in Virginia and Georgia (and in the case of his work in Columbus, in Indiana as well). Cobbs Aff., ¶ 11. No records relating to his compensation are located in this district. Cobbs Aff., ¶ 12.

Lastly, this district is not a proper venue for Crawley's Title VII claim for discriminatory failure to promote to positions outside this district. Crawley claims that NS failed to select him for promotion to "numerous upper management positions," but he only identified two positions within this district. Complaint, ¶¶

15-17. To the extent the positions Crawley allegedly sought were located outside this district, he cannot claim that the employment practice of failing to select him for these positions was committed here. There are no records located in this district relating to NS's alleged failure to promote Crawley into such positions, and Crawley cannot claim that he would have worked in this district had he been granted such promotions. Accordingly, this district is not a proper venue for Crawley's Title VII claims for discipline, compensation and failure to promote to positions located outside this district, and those claims should be dismissed or, as explained below, transferred to the Western District of Virginia.

II. All Of Plaintiff's Claims Could Have Been Brought Initially In The Western District Of Virginia.

Section 1404(a) provides that, "[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a).[1] An important purpose of Section 1404(a) is to "prevent the waste of time, energy, and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." Van Dusen v. Barrack, 376 U.S. 612, 616 (1964). In ruling on a transfer motion, the court must first decide whether the

[1] Because courts in the Third Circuit have applied the same analytical approach when considering a transfer under § 1404(a) or § 1406, this brief utilizes that same approach for all Crawley's claims, regardless of whether they would be transferred pursuant to § 1404 or § 1406.

action may have been brought in the more appropriate forum, here the Western District of Virginia. High River Limited Partnership v. Mylan Labs., Inc., 353 F. Supp. 2d 487, 492 (M.D. Pa. 2005) (citing Van Dusen, 376 U.S. at 616-17).

A. Crawley's Section 1981 claims could have been brought in the Western District of Virginia.

The venue provision applicable to Crawley's § 1981 claims is 28 U.S.C. § 1391(b), see Bragg v. Hoffman Homes, Inc., No. 04-CV-4984, 2005 WL 272966, at *2 (E.D. Pa. Feb. 3, 2005), which provides that venue is proper "in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought."

NS resides in the Western District of Virginia because it maintains continuous and systematic operations throughout that district including not only the operations in its Roanoke rail yard but also departmental offices and shop facilities in Roanoke and extensive rail lines and operations in that district. Cobbs Aff., ¶ 15. Thus, venue in that district is proper with respect to each of Crawley's § 1981 claims. In addition, a substantial part of the events giving rise to his § 1981 claims occurred in that district. Specifically, Crawley felt the effects of the denials of promotions to upper management positions in Roanoke because he alleges those denials occurred while he was working there. Complaint, ¶ 15. Crawley alleges he received a discriminatory salary increases in 2005 and 2006. Complaint, ¶ 19. The 2005 raise was based on the work he performed in Roanoke until his demotion on November 1, 2005, and the management decisions relating to his raises in both 2005 and 2006 were made in Virginia, among other states. Crawley also alleges he was unlawfully denied a salary increase in connection with his transfer from Birmingham, Alabama to Roanoke in 2003. Complaint ¶ 10. Finally, his unlawful discipline claim is based on his demotion from his position as Division Superintendent in Roanoke. That demotion, in turn, was based on NS's investigation – in Roanoke – of Crawley's mishandling of employee injuries that occurred in or near Roanoke. Accordingly, the Western District of Virginia is a proper venue for all of Crawley's § 1981 claims.

B. Crawley's Title VII claims could have been brought in the Western District of Virginia.

Under Title VII's venue provision, 42 U.S.C. § 2000e-5(f)(3), discussed above, the Western District of Virginia is a proper forum for each of Crawley's Title VII claims. Crawley claims he was denied promotion into "numerous upper management positions" while working in Roanoke prior to his demotion. Complaint, ¶ 15. Thus, the alleged failure to promote occurred in the

Western District of Virginia. See Passantino v. Johnson & Johnson Consumer Products, Inc., 212 F.3d 493, 506 (9th Cir. 2000) ("[W]e hold that venue [under Title VII] is proper in . . . the forum in which that [employment] decision is implemented or its effects are felt."). The allegedly discriminatory salary increases that Crawley received in 2005 and 2006 were based on decisions made in Virginia, among other states. The 2005 raise was based on his performance in Roanoke, and he felt the effects of that increase while he worked in Roanoke in 2005. Lastly, Crawley was notified in Roanoke in October 2005 that he would be demoted from his position in Roanoke to a less senior management position in Columbus. This demotion was also implemented, and its effects were felt by Crawley, while he still worked in Roanoke. Thus, the Western District of Virginia is clearly a proper venue for each of Crawley's Title VII claims.

III. The Convenience Of The Parties And All Private And Public Interests Compel Transfer To The Western District of Virginia.

After determining that the action may have been brought in the proposed transferee district, the Court must weigh various private and public interests implicated by the language of § 1404(a). Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3rd Cir. 1995). The private interests include (1) the plaintiff's forum preference as manifested in the original choice; (2) the defendant's preference; (3) whether the claim arose elsewhere; (4) the convenience of the parties as indicated by their relative physical and financial conditions; (5) the convenience of the witnesses-but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; (6) the location of books and records (limited to the extent that the files could not be produced in the alternative forum). Ibid.

A. The private interest factors clearly favor the Western District of Virginia.

1. Crawley's choice of forum is not entitled to deference.

Usually, a plaintiff's forum preference is given significant deference under § 1404(a). Lomanno, 285 F. Supp. 2d at 644. However, the plaintiff's choice merits less deference when the selected forum "is neither his home nor the site of the occurrence upon which the suit is based." High River, 353 F. Supp. 2d at 498-99; Dobrick-Peirce v. Open Options, Inc., No. 2:05CV1451, 2006 WL 2089960, at *7 (W.D. Pa. July 25, 2006) (where none of the conduct complained of occurred in plaintiff's chosen forum, plaintiff's choice is entitled to considerably less deference).

Crawley neither lives nor works in Pennsylvania. No conduct giving rise to his claims took place here. He has not alleged and cannot allege that the Middle District of Pennsylvania has any meaningful connection to this case. The sole connection that Crawley has alleged – that two of the many promotions he was denied were to positions located in Harrisburg – is not based on any acts or events that took place here. Thus, he can point to no fact that entitles his choice of forum to any deference.

2. NS's preferred forum is the Western District of Virginia.

NS much prefers the Western District of Virginia, given that district's overwhelming connection to the events that gave rise to Crawley's claims and the convenience of litigating there.

3. Crawley's claims arose in Roanoke.

The private interest that takes into account where Crawley's claims arose heavily favors transfer. Most of the events giving rise to his demotion, failure to promote, and compensation claims, occurred, or their effects were felt, in Roanoke. None occurred here.

In particular, NS demoted Crawley from his position in Roanoke to a less senior management position in Columbus. NS officers traveled to Roanoke to conduct the investigation, and the underlying events that gave rise to the investigation, including the employee injuries and Crawley's mishandling of them, all occurred in or near Roanoke. See Lomanno, 285 F. Supp. 2d at 645 (recognizing that "where the claim arose" may include the locations where management's investigations and/or decision-making took place). None of these events occurred here.

4. The Western District of Virginia is the more convenient forum for the parties.

The next private interest factor is the convenience of the parties. Aside from Crawley and Cobbs (who was also demoted from his Roanoke position to a position in Atlanta as a result of his involvement in the mishandling of employee injury reports), the NS employees and supervisors who were involved in the investigation or the events that led to the investigation of Crawley's misconduct, as well as the decision-makers responsible for his demotion, promotion and compensation, work and reside in Virginia. Cobbs Aff., ¶ 16. Indeed, witnesses such as Bannister and Kendrick still work in Roanoke, and Tickle, who is currently on leave, was last based in nearby Radford, Virginia. Cobbs Aff., ¶ 16. Although NS could produce its current employees at trial either in this district or in Virginia, the inconvenience and disruption to NS's operations would be significantly greater if its witnesses were forced to travel to this court rather than to Roanoke.

Crawley cannot establish that litigating in this district would be more convenient than litigating in Roanoke. He does not reside in this district and has clearly shown a willingness to travel in connection with this litigation, given that his residence in Dublin is approximately 390 miles from Harrisburg and approximately the same distance from Roanoke. Cobbs Aff., ¶ 17. Moreover, Crawley has previously worked and lived in Roanoke and is well familiar with that area. See Lomanno, 285 F. Supp. 2d at 645 (plaintiff, who lived and filed suit in Pennsylvania, "cannot as effectively argue that pursuing the Title VII claim in Virginia is hugely inconvenient," where he had previously spent time working in Virginia).

5. The Western District of Virginia is more convenient for key witnesses.

The next factor is the convenience of the witnesses. Given that no material witnesses for either Crawley or NS reside or work in this district, every witness required to attend a trial here would experience some inconvenience. However, since several of NS's key witnesses, including Bannister, Kendrick and Tickle, reside and work in or near Roanoke, Cobbs Aff., ¶ 16, those individuals will clearly find a trial in Roanoke more convenient. Thus, Virginia is the more convenient forum for the witnesses who will be required to attend trial.

6. The relevant records pertaining to Crawley's employment are located in Virginia.

The final private factor is the location of relevant records. This factor also favors the Western District of Virginia, because most of the records pertaining to the material events in this litigation, including records relating to Crawley's employment in Roanoke, the investigation into his mishandling of the reporting of employee injuries, and the decisions regarding his demotion to Columbus, his salary increases, and his eligibility for promotion, are located in Virginia, and some are in Roanoke.[2] Cobbs Aff., ¶ 12. No relevant documents are located here. Cobbs Aff., ¶ 12.

In short, Crawley's choice of forum is the only factor favoring this district, and his choice is not entitled to deference since he does not reside here and no material events occurred in this district. Each of the remaining private interest factors favors transfer to the Western District of Virginia.

B. The public interest factors also favor transfer of this case to the Western District of Virginia.

The Third Circuit has recognized several public interest factors that may be considered in determining whether to grant a transfer motion, including (1) the enforceability of the judgment; (2) practical considerations that could make the trial easy, expeditious, or inexpensive; (3) the relative administrative difficulty in the two fora resulting from court congestion; (4) the local interest in deciding local controversies at home; (5) the public policies of the fora; and (6) the familiarity of

[2] While most of these relevant documents are located in Virginia, the remaining documents are located in Georgia. Cobbs Aff., ¶ 12.

the trial judge with the applicable state law in diversity cases. Jumara, 55 F.3d at 879-80. Depending on the circumstances, some of these factors may play no role in a § 1404(a) balancing, so this Court need only consider those factors that are relevant to this action. Lomanno, 285 F. Supp. 23 at 647.

1. Crawley's six claims could be litigated most expeditiously and inexpensively in the Western District of Virginia.

There is a strong public interest in resolving controversies in an expeditious and inexpensive manner. Because this Court is not a proper venue for Crawley's Title VII claims concerning his demotion, compensation and failure to be promoted to positions outside this district, 28 U.S.C. § 1406 requires that those claims be dismissed or, alternatively, transferred to an appropriate forum. Transferring only those claims, however, would effectively splinter Crawley's lawsuit and result in litigation over nearly identical employment issues in two different districts. The Third Circuit has held that a court "should not sever [claims] if the defendant over whom jurisdiction is retained is so involved in the controversy to be transferred that partial transfer would require the same issues to be litigated in two places." Sunbelt Corp. v. Noble, Denton & Assocs., 5 F.3d 28, 33-34 (3rd Cir. 1993)). Indeed, in "cases involving claims under Title VII and another claim governed by the general venue statute of § 1391, courts have consistently transferred the entire action to the district where venue is proper for both claims." Vinson v. Seven Seventeen HB Philadelphia Corp., No. Civ. A 00-6334, 2001 WL 1774073, at *30 (E.D. Pa. Oct. 31, 2001). In the event this Court is not inclined to dismiss Crawley's Title VII claims for which venue is lacking, those claims could most efficiently be resolved by being transferred, along with his remaining Title VII and § 1981 claims, to the Western District of Virginia, where venue is proper for all Crawley's claims.

2. Virginia has a greater local interest in this case than Pennsylvania.

Another factor that favors Virginia is the public interest in having local controversies decided at home. The only possible relationship Crawley can show to this district is that two of the promotions he sought were located here. He did not interview here, has never been stationed here, and does not live here. In contrast to this district's tenuous connection to Crawley's case, the Western District of Virginia clearly has a strong connection to and interest in this controversy. See Vinson, 2001 WL 1774073, at *32 (finding transfer warranted in part because transferee districts had interest "in resolving discrimination suits occurring on their soil"). The Western District of Virginia clearly has the greater interest in resolving this matter locally.

CONCLUSION

For the foregoing reasons, Defendant Norfolk Southern Corporation respectfully requests that this Court dismiss or, in the alternative, transfer Plaintiff Melvin L. Crawley's Title VII claims for unlawful demotion, compensation and failure to promote (to positions outside this district) to the Western District of Virginia pursuant to 28 U.S.C. § 1406, and that it transfer his remaining claims there as well pursuant to 28 U.S.C. § 1404.

Respectfully submitted,

By: s/ Thomas G. Collins

James S. Whitehead, IL 3004333
Brian P. Guarraci, IL 6277583
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
Tel: (312) 853-7000
Fax: (312) 853-7036
jwhitehead@sidley.com
bguarraci@sidley.com

Attorneys for Defendant Norfolk Southern Corporation

Thomas G. Collins, PA 75896
BUCHANAN INGERSOLL & ROONEY PC
One South Market Square, 3rd FL
213 Market Street
Harrisburg, PA 17101-2132
Tel: (717) 237-4843
Fax: (717) 233-0852
thomas.collins@bipc.com

Attorneys for Defendant Norfolk Southern Corporation

Dated: July 2, 2007

CERTIFICATE OF COMPLIANCE PURSUANT TO LOCAL RULE 7.8(b)(2)

Pursuant to Local Rule 7.8(b)(2), it is hereby certified that the foregoing *Memorandum Of Defendant Norfolk Southern Corporation In Support Of Its Motion To Dismiss Certain Of Plaintiff's Title VII Claims For Improper Venue Or, In The Alternative, Transfer Those Claims, And To Transfer Plaintiff's Remaining Claims Under Title VII And Section 1981* contains 4,792 words (exclusive of the title page, tables of contents, table of citations, certificate of service, and this certificate), according to the Microsoft® Word 2003 word processing system used to prepare it, and that the memorandum therefore complies with the type-volume limitations of Local Rule 7.8(b)(2).

s/ Brian P. Guarraci

Attorney for Defendant Norfolk Southern Corporation

CERTIFICATE OF SERVICE

I, Thomas G. Collins, one of the attorneys for Defendant Norfolk Southern Corporation, certify that I caused copies of the attached to be served upon:

Frank P. Clark
Clark & Krevsky, LLC
P.O. Box 1254
Camp Hill, PA 17001-1254

Lori B. Kisch
Keir S. Bickerstaffe
Wiggins, Childs, Quinn & Pantazis, PLLC
2031 Florida Avenue, N.W., Suite 30
Washington, D.C. 20009

this 2nd day of July, 2007 through the Court's electronic filing system.

s/ Thomas G. Collins
Thomas G. Collins